

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JONATHAN HESS,

Plaintiff

Vs,

COHEN & SLAMOWITZ LLP

Defendant

COMPLAINT

5:09-cv-954

(GTS/DEP)

Albany County }

New York State } ss:

JONATHAN HESS, the Plaintiff in this action, by his attorney, complains of the defendant by alleging and showing that:

NATURE OF ACTION

1. This is an action to enforce the Fair Debt Collection Practice Act (FDCPA) 15 USC sc 1692 *et seq*,

JURIDICTION AND VENUE

2. This Court has federal question jurisdiction under 15 USC §1692k (d) and 28 USC §1331. Declaratory relief is available per 28 USC §§ 2201 and 2202
3. Venue is proper in this district per 28 USC §1391 (b), as the acts and transactions that give rise to this action occurred, in substantial part, in

this district. Venue is also proper in this district because plaintiff lives in this district, defendant conducts business in this district and the injury occurred in this district.

PARTIES

4. At all relevant times:
 - a. I am and was a resident of the Town of Clay, Onondaga County, New York State, within this district,
 - b. I am a "consumer" as that term is defined in the FDCPA, in that I am a natural person who allegedly owes a debt to another.

5. Upon information and belief, at all relevant time, the defendant Cohen & Slamowitz LLP ("C&S") :
 - a. is a New York limited liability partnership with a principal place of business at Woodbury New York 11797
 - b. Is a "debt collector" as that term is defined in the FDCPA;
 - c. Is in the business of collecting consumer debt for others by use of the mail, telephone, and the courts of New York and other means of interstate commerce.

FACTUAL ALLEGATIONS

6. On or about 4/20/09 C&S sued me in the Syracuse City Court on behalf of Midland Funding LLC as an assignee of HSBC.
7. A true copy of the summons and complaint is attached to this as Exhibit A and made a part of this.
8. The subject of the lawsuit was an alleged credit card debt which (whether I owe it or not) is an alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, or services are primarily for personal, family, or household purposes, hence a "debt" as that term is defined by the FDCPA
9. C&S did not allege that I signed a contract or other document evidencing a debt to Midland or HSBC in the City of Syracuse. In fact, I did not.
10. I have not/do not live or work or had a place for business in the City of Syracuse, New York;
11. I was served at my home at North Syracuse, New York, in the Town of Clay. The Town of Clay is not contiguous by land to the City of Syracuse.

12. As a result, I had to hire an attorney at a cost of \$ 400.00 to defend me and bring a motion to dismiss the complaint on jurisdictional grounds, which motion the Syracuse City Court granted on 7/28/09.
13. A true copy of the Syracuse City Court's order dismissing the complaint is attached as Exhibit B.

AS A FIRST CAUSE OF ACTION

(Violation of the Fair Debt Collection Practices Act)

14. I reallege and reiterate the allegations of the preceding paragraphs;
15. C&S's actions in suing me in a judicial district (i.e., the Syracuse City Court) where I do not live nor where the alleged credit card contract sued upon was signed, violates 15 USC 1692i
16. Upon information and belief C&S's actions as alleged were frequent, intentional, and persistent.
17. As a result I have been damaged.


JURY DEMAND

I respectfully request a trial by jury of all issues.

WHEREFORE, I ask the Court for judgment:

- a. declaring the actions of C&S in violation of the FDCPA ;
- b. awarding me actual damages , including the amount of \$400.00;
- c. awarding me statutory damages per 15 USC §1692k;
- d. awarding me costs and disbursements of this action, and reasonable attorney's fees (per 15 USC 1692k), and
- e. such other, further and different relief as the Court finds proper here.

DATED: August 12, 2009



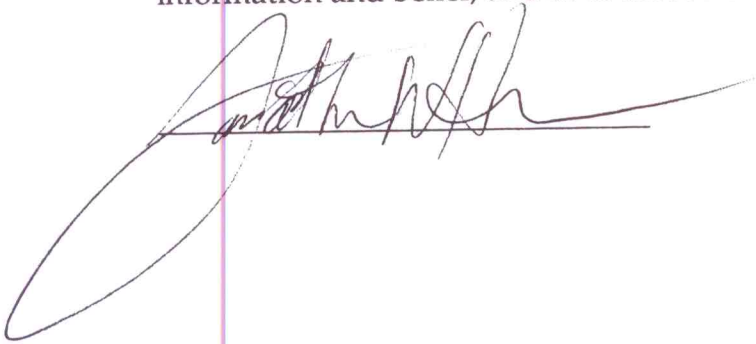
ANTHONY J PIETRAFESA ESQ. (102368)

Attorney for the Plaintiff
117 Christopher Lane
Altamont NY 12009
518.218.0851
Fax: 518.514.1241
apietraf@nycap.rr.com

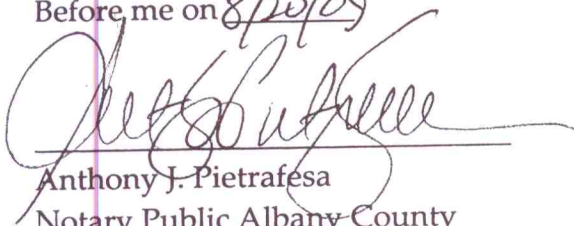
VERIFICATION

New York State }
Albany County } ss:

Jonathan Hess, being duly sworn, deposes and says: I the plaintiff in this action, I have read the complaint, and the factual allegations contained in the complaint are true to my personal knowledge except for those based on my information and belief, and as to those I believe them to be true.

A handwritten signature in dark ink, appearing to read 'Jonathan Hess', is written over a horizontal line.

Sworn to and Subscribed
Before me on 8/20/09

A handwritten signature in dark ink, appearing to read 'Anthony J. Pietrafesa', is written over a horizontal line.

Anthony J. Pietrafesa
Notary Public Albany County
02PI6155974
My Commission exp. 11/20/2010